

ESTTA Tracking number: **ESTTA461014**

Filing date: **03/09/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77753502
Applicant	Aristocrat Technologies Australia Pty Ltd
Applied for Mark	BUFFALO
Correspondence Address	LAUREN KRUPKA ARISTOCRAT TECHNOLOGIES INC LEGAL DEPT , 7230 AMIGO STREET LAS VEGAS, NV 89119 UNITED STATES uspto.mail@aristocrat-inc.com, lauren.krupka@aristocrat-inc.com
Submission	Reply Brief
Attachments	Reply Brief_Buffalo_030912.pdf (17 pages)(5011262 bytes)
Filer's Name	Lauren Krupka
Filer's e-mail	uspto.mail@aristocrat-inc.com, lauren.krupka@aristocrat-inc.com
Signature	/Lauren Krupka/
Date	03/09/2012

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Serial No.: 77753502

Applicant's Mark: BUFFALO

Filed: June 5, 2009

Applicant:
Aristocrat Technologies Australia Pty Ltd.

Law Office 110

Examining Attorney:
CASTRO GIANCARLO

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S REPLY BRIEF

Applicant wishes to address herein arguments made by the Examining Attorney in the Examining Attorney's Appeal Brief, filed January 19, 2012, in reference to the above captioned application. Applicant believes several of the Examining Attorney's contentions to be in error and asks that this Board reverse his/her refusal and allow this mark to proceed to publication.

Extensive Use of Third Party Marks Weakens the Cited Registration
And thus there is less Likelihood of Confusion

A. Cited Third Party Marks are in Actual Use

The Examining Attorney states, "Evidence of weakness or dilution consisting solely of third-party registrations...is generally entitled to little weight in determining the strength of a mark, because such registrations do not establish that the registered marks identified therein are in

actual use in the marketplace or that consumers are accustomed to seeing them.” Examining Attorney’s Brief, p. 3. Applicant responds herein by providing evidence in Exhibit A of registrations in actual use that are thus are entitled to reasonable weight when deciding likelihood of confusion. See Seabrook Foods v. Bar-Well Foods Ltd., 568 F. 2d 1342, 196 USPQ 289 (CCPA 1977). Accordingly, there is no likelihood of confusion because the extensive use of the word, “Buffalo,” for goods and services in the gaming industry prevents such confusion because no reasonable consumer would believe that *all* goods and services in the gaming industry that bear the word “buffalo” emanate from the same source. In the real world, on casino grounds, the scenario that a consumer would confuse every “buffalo” themed gaming product and service as related to each other is *highly* unlikely and unrealistic, given the extensive use of “buffalo” in the gaming industry, as discussed in further detail in Applicant’s Appeal Brief. The court in Matsushita Elec. Indus. Co., Ltd. v. National Steel Construction Co. sensibly stated, “The determination of likelihood of confusion involves, to the extent possible, an evaluation of what happens in a real world setting.” 442 F.2d 1383, 1385 (CCPA 1971).

B. Third Party Marks Must be Considered to Determine Strength of the Cited Registration

Additionally, Applicant asserts that third-party registrations must be considered in order to determine the scope of protection the Cited Registration should be accorded. A weaker mark surely is deserving of less protection than a very strong mark and a mark may become weak by use in the marketplace of a range of similar marks owned by various different parties and indicating many difference sources of goods. See Amstar Corp. v. Domino's Pizza, Inc., 615 F.2d 252, 259-60 (5th Cir. 1980). “The greater the number of identical or more or less similar trade-marks already in use on different kinds of goods, the less is the likelihood of confusion...” *Id.* (Citing comment g to the Restatement of Torts § 729 (1938)).

C. Third Party Marks are for Similar Goods and Services thus Weakening Cited

Registration

Additionally, the Examining Attorney states, “The goods and/or services listed in the third-party registrations submitted by applicant are different from those at issue and thus do not show that the relevant wording is commonly used in connection with the goods and/or services at issue.” Examining Attorney’s Brief, p. 3. Applicant asserts that it is well established that the goods and/or services need not be identical, only related in some manner and have the potential to be encountered by the same purchasers. See Safety-Kleen Corp. v. Dresser Indus., Inc., 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975) and In re Total Quality Group, Inc., 51 USPQ2d 1474, 1476 (TTAB 1999).

Below for reference is an updated version of the list filed with Applicant’s Appeal of “Buffalo” marks. Here, Applicant’s goods are “Gaming machines, namely, devices which accept a wager,” which is, of course the same as Applicant’s other referenced mark, BUFFALO MOON, as well as IGT’s mark for THUNDERING BUFFALO, so that accounts for two of the referenced marks (not including Registrant’s Mark). The other four marks are registered in Class 41 for variations of casino services. It is clear to any reasonable observer that casino services and gaming machines that accept a wager (i.e. “slot machines”) are related. Casinos are, of course, where the majority of gaming machines/slot machines sit and operate and such goods are undeniably related and intertwined with casino services.

BUFFALO BILL’S RESORT & CASINO SN:76-258727 RN:3,270,691	Registered July 31, 2007	(Int’l Class: 41) Casino, golf course, amusement park and entertainment services, namely, live performances featuring live and prerecorded music, prerecorded video, singers, dancers, magicians, actors, acrobats and comedians	Affinity Gaming, LLC
BUFFALO BILL’S	Renewed	(Int’l Class: 41)	Affinity Gaming, LLC

RESORT CASINO and Design SN:75-018542 RN:2,015,414	November 12, 2006	Entertainment services, namely, services by live vocal, instrumental and musical performing groups, amusement park services and casino services	
BUFFALO BUCKS SN:76-358324 RN:2,765,289	Registered 8 Accepted April 13, 2010	(Int'l Class: 9) Gaming machines and operating software that runs thereon	Rocket Gaming Systems, LLC.
BUFFALO MOON SN:85-219633	Published 12/6/11	(Int'l Class: 9) Electronic gaming machines, namely, devices which accept a wager	Aristocrat Technologies Australia Pty LTD.
BUFFALO THUNDER RESORT & CASINO and Design SN:85-230003 RN:3,985,905	Registered June 28, 2011	(Int'l Class: 21) Coffee cups (Int'l Class: 25) Clothing, namely, shirts, jackets, sweatshirts, headbands, skirts and ties (Int'l Class: 41) Gaming services in the nature of casino gaming (Int'l Class: 43) Hotel services	Buffalo Thunder, Inc. (United States Corporation Chartered by the Pueblo of Pojoaque, a Federally Recognized Indian Tribe) 17746 U.S. Highway 84/285 Santa Fe, New Mexico 87506
PRIMM VALLEY CASINO RESORTS BUFFALO BILL'S PRIMM VALLEY WHISKEY PETE'S and Design SN:76-572213 RN:3,753,480	Registered March 2, 2010	(Int'l Class: 41) Casino services ; entertainment services, namely, live performances featuring musicians and singers, dancers, magicians, actors, acrobats, comedians and prerecorded music and video	Affinity Gaming, LLC
SENECA BUFFALO CREEK CASINO SN:78-875181 RN:3,596,671	Registered March 24, 2009	(Int'l Class: 41) Casino services	Seneca Gaming Corporation (United States Tribally-Chartered Corporation of the Seneca Nation of Indians, a Federally-Recognized American Indian Tribe)
THUNDERING BUFFALO SN:85-055103 RN:3,967,823	Registered May 24, 2011	(Int'l Class: 9) Gaming machines, namely, devices which accept a wager	IGT (Nevada Corp.)

The Cited Registration and Applicant's Mark Present Different Commercial Impressions

The Examining Attorney states that because the dominant part of the Cited Registration "Buffalo" and Applicant's mark is solely BUFFALO that the commercial impressions of the two

Marks are the same. Applicant calls the Board's attention to Applicant's Appeal Brief where Applicant discusses the difference connotation of the two Marks in relation to appearance of the Marks. Applicant also raised in its Appeal Brief the reference to "buffalo nickels," which is clearly what the Cited Registration was intended to evoke. Applicant further asserts herein that the commercial impressions differ because the Cited Registration, BUFFALO BUCKS, taken as a whole, is a classic slot machine name whereby the mark references money that a player can win, e.g. BUCKS, CASH, LOOT, JACKPOT, etc. The commercial impression of the Cited Registration very clearly gives the commercial impression of money and winnings and further associates itself with that impression by reminding the consumer of "buffalo nickels." In contrast, Applicant's mark only references the animal, "buffalo." It makes no reference to money or winnings and certainly does not remind the consumer anything other than the animal. The commercial impression of the Cited Registration is much more straight-forward and specific to the goods and gaming; whereas Applicant's Mark is much more arbitrary for use on a gaming machine.

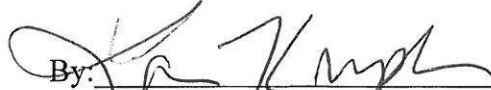
Conclusion

For all the foregoing reasons in addition to Applicant's Appeal Brief, filed and dated November 14, 2011, Applicant submits that the Examining Attorney's refusal should be reversed and the Application to register this mark should be passed to publication.

Respectfully submitted,

Aristocrat Technologies Australia Pty Ltd

Dated: March 9, 2012

By: _____

Lauren Krupka
Aristocrat Technologies, Inc.
7230 Amigo Street
Las Vegas, NV 89119
702-599-6818
Attorney for Applicant

EXHIBIT A

ESP8701

Employment | Affinity Gaming



HOTEL GAMING ENTERTAINMENT CASINO DASH DINING GOLF SPA SHOPPING GROUP SALES FAMILY ATTRACTIONS SPECIAL OFFERS

Hotel Accommodations

Kick back and
enjoy your stay in comfortable rooms

BUFFALO BILL'S RESORT & CASINO

HOTEL ACCOMMODATIONS

BUFFALO BILL'S RESORT & CASINO

PRIMM VALLEY RESORT & CASINO

WHISKEY PETE'S HOTEL & CASINO

AMENITIES

THE SPA AT PRIMM

DIRECTIONS & MAP

CONTACT US

FAQS

Kick Back & Stay Awhile - Combining Old West style with New West fun, Buffalo Bills Resort and Casino gives you the perfect place to kick up your heels, or hang your hat.

Located on the northbound exit ramp for I-15, it boasts two towers and 1,242 guest rooms and luxurious suites adorned with everything under the sunset to make you feel at home.

Amenities - If fun is what you're after, get ready to rumble with the Desperado, one of the tallest and fastest roller coasters in the world, the Turbo Drop, The Vault a 3D simulation and the Adventure Canyon Log Flume Ride. Enjoy 1,723 slot machines, 39 table games, live poker and a race and sports book. If you've worked up your appetite, saddle up to a variety of tastes including Tony Roma's, Wagonmaster Coffee Shops, Miss Ashley's Boarding House Buffet, a Food Court and much more. Make a splash in our Buffalo shaped swimming pool, we guarantee you've never seen anything like this- a giant buffalo shaped swimming pool for your relaxing enjoyment. We've tamed the wild and filled it to the brim with fun!

Floor space: 350' X 242' = 84700 sq. ft.

Number of rooms: 1242

Total number of slots: 960

Total number of acreage with all three properties: 143 acres

Total number of restaurants: 6

CLICK TO ENLARGE



DELUXE



DELUXE

JACUZZI
SUITE[BOOK YOUR HOTEL ROOM](#)

Home | Hotel Location | Email Us | Information 800-386-7867 | Sign up for Email Promotions
* Hotel Disclaimer | Copyright 2012 Affinity Gaming, LLC All Rights Reserved. | Privacy Policy



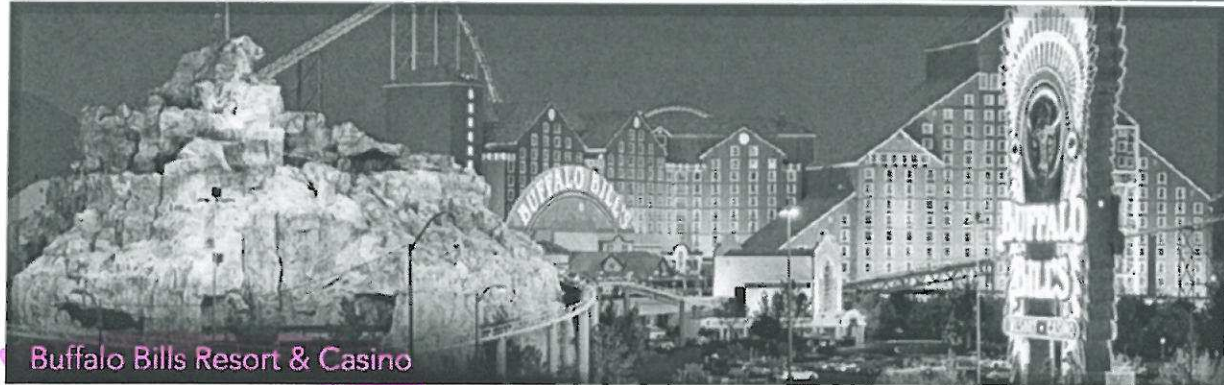
[ABOUT US](#)

[INVESTOR RELATIONS](#)

[PROPERTIES](#)

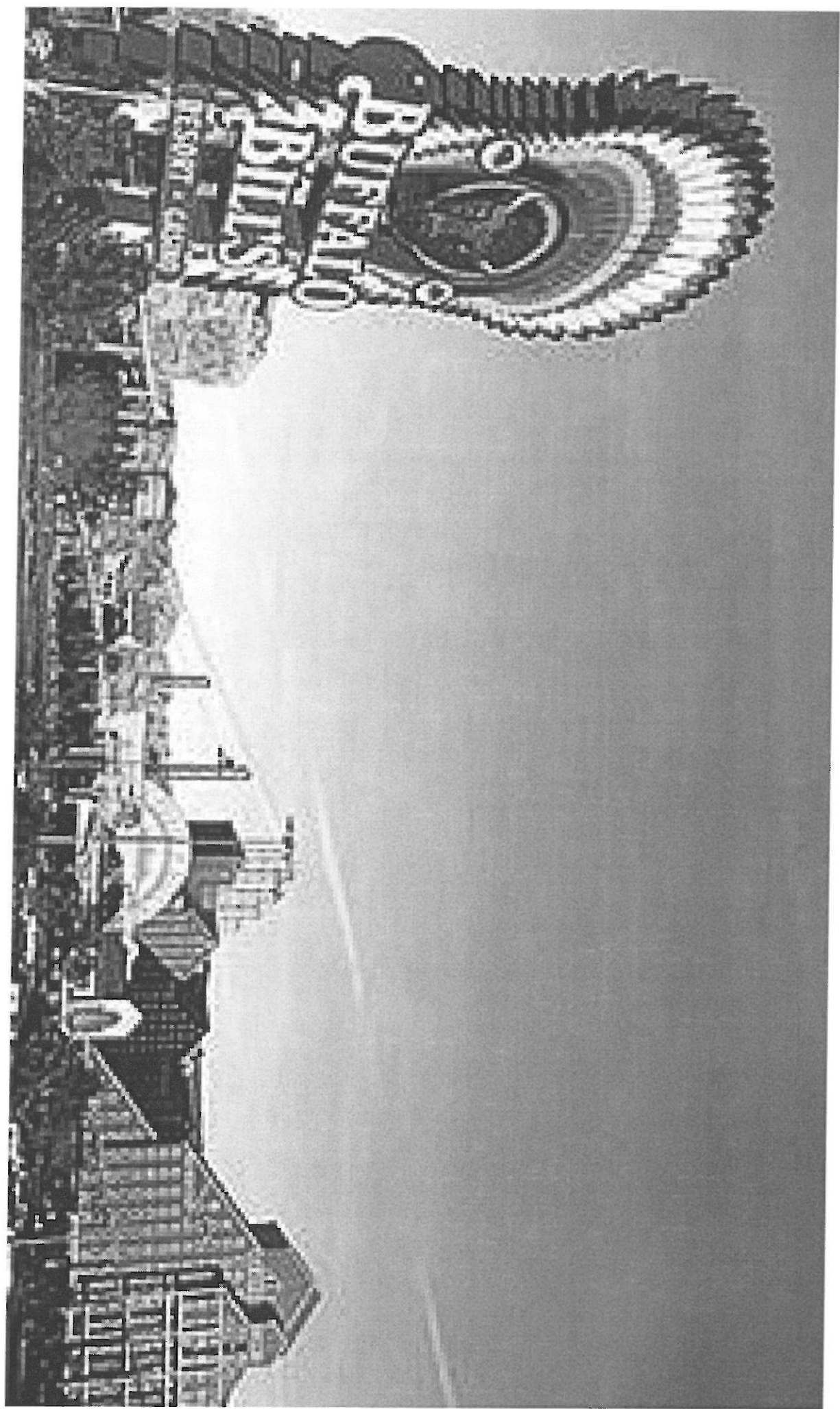
[PRESS AND MEDIA](#)

[CAREERS](#)



[Contact Us](#) | [Equal Opportunity Employer](#) | [Privacy Policy](#) | [Sitemap](#)

©2011 Affinity Gaming, LLC. All rights reserved.





Gold Series® has awarded more than half a billion dollars in prizes including fifteen one million+ dollar top prize winners! Check out Gold Series News to see where these lucky winners struck gold.

[Home](#)

[About Rocket](#)

[News Room](#)

[Products](#)

[Careers](#)

[Support](#)

[Contact](#)



Rocket Gaming Systems® (Rocket) is a federally registered trademark owned and operated by the Miami Tribe of Oklahoma Business Development Authority (MBDA).

Buffalo Bucks®



KINGS OF THE PRAIRIE.

This hot commodity will have players travelling in herds to get their chance to win a wagon full of gold.

Configuration: 5 Reel, 20 Lines
Max Bet: 250 Credits, 500 Credits
Denominations: 1¢

[< Back](#)

[Terms Of Use](#) | [Privacy Policy](#) | [Sitemap](#) | [Website Feedback](#)

Copyright © 2012 Rocket Gaming Systems. All Rights Reserved.



ROCKET GAMING SYSTEMS

Where the games and service are stellar

rocketsales@rocketgaming.com | 1-877-315-2288

THE GAMES

CAREERS

CONTACT US

HOME

PREVIOUS

NEXT



Whopper®
Awesome play that will have you hook, line and winner.



African Dusk®
Travel to an exotic land.



Dolphin Treasure®
An underwater adventure.



Eggstreme Riches®
Excitement that comes by the dozen.



Louie's Gold®
For action that shines.



Peacock Magic®
A colorful display of fun and action.



Helen of Troy®
Where you rule.



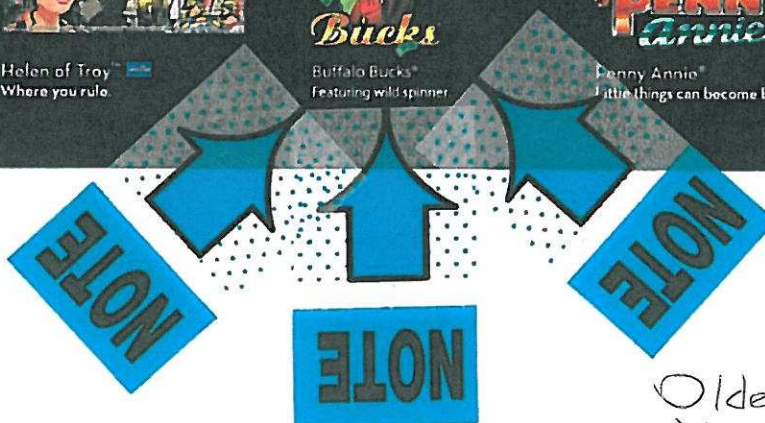
Buffalo Bucks®
Featuring wild spinner.



Penny Annie®
Little things can become big things.

 Indicates Aristocrat's Titles

 Indicates Bally's Titles



Older Version



GZE 2011

CREDIT 9010 BET 50 WIN 0

Game Over - Play Now



Game Over - Play Now





[Shuttle Schedule](#)
[Subscribe to e-mail promotions](#)

Check-in
03/09/2012

Check-out
03/10/2012

Rooms Adults Children

CHECK RATES

[HOME](#)
[About Us](#)
[Reservations](#)
[Rates & Packages](#)
[Dining](#)
[Golf](#)
[Spa](#)
[Entertainment](#)
[Contact Us](#)





LIGHTNING REWARDS PLAYERS CLUB

SIGN UP

WINTER RATES

Rooms from **\$99** / night

BOOK NOW

GOLF SPECIALS

SPA SPECIALS



To visit our sister casino
Cities of Gold
[CLICK HERE](#)

UPCOMING ENTERTAINMENT & HOTEL SPECIALS




EVERY MONDAY & WEDNESDAY

SIGN UP FOR EMAIL PROMOTIONS AND STAY IN TOUCH!

To speak directly to the Resort please call 877-THUNDER (877-848-6337)

Join Us  

- Home | Special Offers | Gaming | Accommodations | Dining | Entertainment & Events | Meetings & Weddings
 - Photo Gallery | Contact Us | Employment Application | Responsible Gaming | Cities of Gold Casino
 - RV Park | Privacy Policy | Site Map
-  Hospitality Toolkit®

Employment | Affinity Gaming

RESERVATIONS
1-888-FUN-STOP (386.7867)
OR **BOOK ONLINE**



SIGN UP TODAY!
TO RECEIVE EMAIL
PROMOTIONS

[HOTEL](#) [GAMING](#) [ENTERTAINMENT](#) [CASINO COACH](#) [DINING](#) [GOLF](#) [SPA](#) [SHOPPING](#) [GROUP SALES](#) [FAMILY ATTRACTIONS](#) [SPECIAL OFFERS](#)

**LIVE ENTERTAINMENT
AT PRIMM**

**Your Personal Primm
OFFER SITE
ACCESS NOW!**

**OVER 2,500
LOOSE SLOTS!
SPORTS BOOK, LIVE
POKER, AND MORE!**



Three GREAT properties...One GREAT destination!

**Online
Room Specials**

Check In: 02/16/2012
Property:
Nights:
Adults:
Children:
Offer Code:

check rates »

f t Check out the
latest news!

Join today and see how far your
PLAY will take you.

[DETAILS »](#)

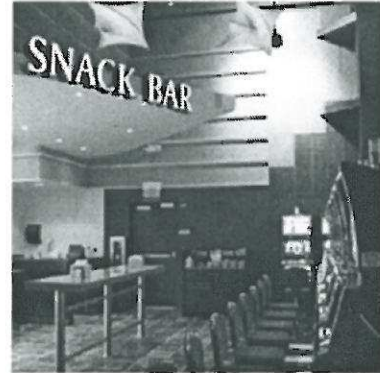
[Home](#) | [Hotel Location](#) | [Email Us](#) | [Information 800-386-7867](#) | [Sign up for Email Promotions](#)
* [Hotel Disclaimer](#) | © 2012 Affinity Gaming, LLC All Rights Reserved | [Privacy Policy](#)

[HOME](#)[SLOTS](#)[PLAYER REWARDS](#)[PROMOTIONS](#)[ABOUT US](#)[FACILITY](#)[NEWS & RELEASES](#)[WIN/LOSS REQUEST](#)[\(PDF\)](#)[CONTACT US](#)

ABOUT US: FACILITY

EXCITING TIMES!

Located in the heart of downtown Buffalo's burgeoning Inner Harbor area, Seneca Buffalo Creek Casino offers the gaming excitement you expect from a Seneca property in an intimate environment. The casino features 457 slot machines with the latest games, themes and technology for you to enjoy 24 hours a day, 7 days a week!



Seneca Buffalo Creek Casino plays an important role in the ongoing development taking place in downtown Buffalo. Whether you want to take in a hockey game or concert at HSBC Arena, a baseball game at Coca-Cola Field or visit Buffalo's historic waterfront, you'll be just blocks away from the non-stop excitement at Seneca Buffalo Creek Casino. Seneca Gaming Corporation is currently in the planning phase for making Seneca Buffalo Creek Casino bigger and better. Stay tuned for more details on this exciting project!

Opened in 2007, the name Seneca Buffalo Creek Casino refers to the Seneca Nation of Indians' original Buffalo Creek Territory, which occupied lands surrounding the current 9-acre casino site. To help encourage the growth and development of the surrounding neighborhoods, the Seneca Nation and Seneca Gaming Corporation recently established a \$1 million fund to support beautification and community revitalization projects in the area surrounding the casino.

Come see why more than 750,000 people visit Seneca Buffalo Creek Casino every year!

Our facility is located at 1 Fulton Street, Buffalo, NY 14204

[SENECA ALLEGANY CASINO](#) | [SENECA NIAGARA CASINO](#) | [SENECA HICKORY STICK GOLF](#) | [SENECA GAMING CORPORATION](#) | [THE SENECA NATION](#)

Global

Welcome, Guest Create an Account Login

Search IGT.com



Home > Games > Thundering Buffalo™ Video Reel

Land-Based Games

Premier (MegaJackpots)

- Multi-Level Progressive
- Wide-Area Progressive
- Stand-Alone

Core

- Video Reel
- Spinning Reel
- Video Poker
- Multi-Game (Game King)

Central System

- Bingo (Class II)
- CDS

Multi-Player

- Electronic Table
- Virtual Racing

Other Gaming

- Illinois Video Gaming
- Online & Mobile (Interactive)

Thundering Buffalo™ Video Reel

AVP-3D Games: 5-Reel (3x4x5x4x3x), 720-Way, 2,500-Credit



Trailer

Overview

Image Gallery

H5G logo and copyrights are owned by High 5 Games; see www.h5g.com

Login to view secured content.

Global Links: [About IGT](#) [Careers](#) [Investor Relations](#) [News Room](#)

Responsible Gaming

© 2012 IGT. All rights reserved. Privacy Policy | Terms of Use
 IGT company, product and/or service names referenced are either
 trademarks or registered trademarks of IGT or its licensors in the U.S.
 and/or other countries. For details visit www.igt.com/Trademarks.

Wager Wisely.
 If you think you might have a gambling problem, call for help:
 Problem Gambling Helpline, +1-800-522-4700.
 Must be of legal age to gamble.